

**CN** MAR 04 2002

Michael N. Milby, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**MARK NEWBY, ET AL.,**

**Plaintiffs,**

**VS.**

**ENRON CORPORATION, ET AL.,**

**Defendants**

**CIVIL ACTION NO. H-01-3624  
AND CONSOLIDATED CASES**

**JOHN & PEGGY ODAM, FRED A. ROSEN  
and MARIAN ROSEN, HAL MOORMAN  
AND MILTON TATE, TRUSTEES FOR  
MOORMAN, TATE, MOORMAN &  
URQUART MONEY PURCHASE PLAN &  
TRUST,**

**Plaintiffs,**

**VS.**

**ARTHUR ANDERSEN, L.L.P.,**

**Defendant.**

**CIVIL ACTION NO. H-02-3914**

**NOTICE OF BANKRUPTCY FILING OF ENRON  
CORPORATION AND IMPOSITION OF AUTOMATIC STAY**

PLEASE TAKE NOTICE that, on December 2, 2001, Enron Corp. filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York, Case No. 01-16034 (AJG). It is well established that "where an injury is suffered by a corporation and the shareholders suffer solely through depreciation in the value of their stock, only the corporation itself . . . or a stockholder suing derivatively in the name of the corporation may maintain an action against the wrongdoer." Vincel v. White Motor Corp., 521 F.2d 1113, 1118 (2d Cir. 1975). This rule applies equally to

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actions against non-debtor third parties. See, e.g., Seibu Corp. v. KPMG LLP, 2001 WL 1167317, at \*7 (N.D. Tex. Oct. 2, 2001). To the extent plaintiffs in the above-captioned action purport to bring claims for the diminution in the value of stock which plaintiffs held during the relevant period, such claims are derivative in nature as a matter of law. See Crocker v. Fed. Dep. Ins. Corp., 826 F.2d 347, 351 (5th Cir. 1987).

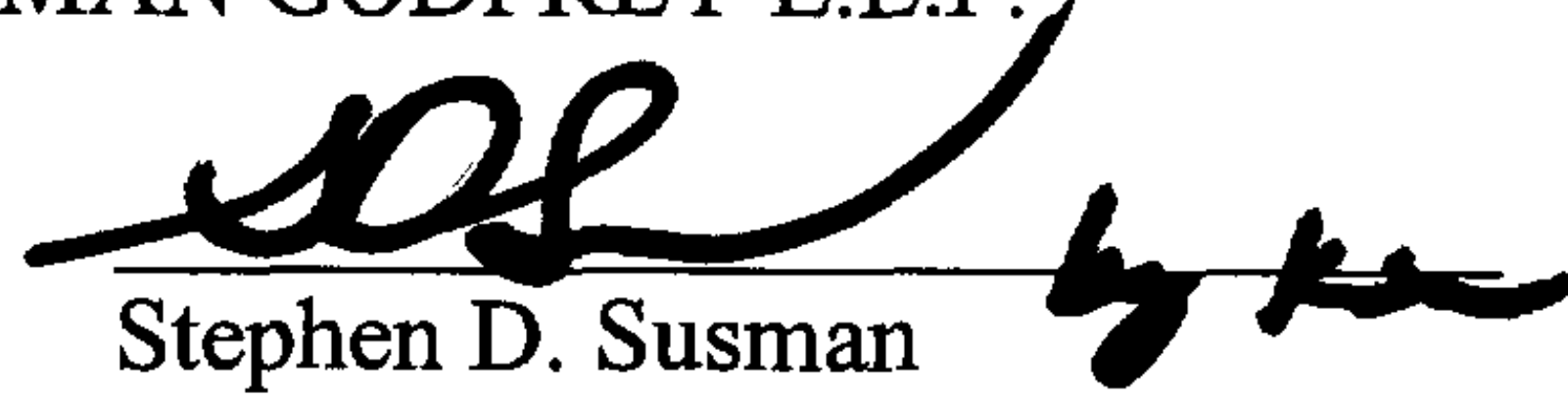
Pursuant to section 541(a)(1) of the Bankruptcy Code, property of the estate encompasses “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). All causes of action held by the debtor, including claims against non-debtor third parties, constitute property of the estate, and thus are subject to the automatic stay pursuant to section 362(a)(3) of the Bankruptcy Code. See, e.g., In re Keene Corp., 164 B.R. 844, 853-54 (Bankr. S.D.N.Y. 1994) (holding breach of fiduciary duty claims against third parties are property of the estate and thus non-debtors are barred by the automatic stay from asserting such claims). Further, the debtor has exclusive standing to assert such claims and the automatic stay prevents shareholders or creditors from asserting those claims derivatively. See, e.g., BRS Assocs., L.P. v. Dansker, 246 B.R. 755, 771-72 (S.D.N.Y. 2000). All actions taken in violation of the automatic stay are null and void.

Dated: March 4, 2002

Respectfully submitted,

SUSMAN GODFREY L.L.P.

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**CERTIFICATE OF SERVICE**

I, Kenneth S. Marks, hereby certify that on the 4<sup>th</sup> day of April, 2002, the foregoing was served by first class mail on the attached service list.

A handwritten signature in black ink, appearing to read 'Ken', is written over a horizontal line.

Kenneth S. Marks

**Service List for Odam Lawsuit**

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